

RECEIVED

JUN 25 1993

SHAINIS & PELTZMAN

COUNSELORS AT LAW

SUITE 500  
1255 23RD STREET, N.W.  
WASHINGTON, D.C. 20037

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

202-857-2946

DOCKET FILE COPY ORIGINAL

June 25, 1993

AARON P. SHAINIS  
202-857-2942

LEE J. PELTZMAN  
202-857-2943

FACSIMILE  
202-857-2900

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Re: MM Docket No. 93-56

Dear Ms. Searcy:

Transmitted herewith, on behalf of C. Devine Media, Inc., are an original and six (6) copies of its Opposition to "Motion for Leave to File Petition for Reconsideration" and "Petition for Reconsideration" in the above-captioned proceeding.

Should any questions arise relative to this matter, please communicate with the undersigned.

Sincerely,

*Aaron P. Shainis*

Aaron P. Shainis  
Counsel for  
C. DEVINE MEDIA, INC.

Enclosure

C:\FILES\SHAINIS.PLD\KBER9356.COV

No. of Copies rec'd 046  
List A B C D E

RECEIVED

JUN 25 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of	)	MM Docket No. 93-56
C. DEVINE MEDIA, INC.	)	File No. <u>BRH-900604YE</u>
For Renewal of License of	)	
Station KBER-FM	)	
Ogden, Utah	)	
STREET STRYDER	)	File No. BRH-900601A3
For Renewal of License of	)	
Station KQOL-FM	)	
Spanish Fork, Utah	)	

To: Administrative Law  
Judge John M. Frysiak

OPPOSITION TO MOTION FOR LEAVE TO FILE  
PETITION FOR RECONSIDERATION AND PETITION FOR RECONSIDERATION

C. Devine Media, Inc. ("Devine"), by its attorneys, hereby submits its Opposition to the "Mass Media Bureau's Motion for Leave to File Petition for Reconsideration" and "Mass Media Bureau's Petition for Reconsideration." In support, the following is respectfully submitted.

1. The Bureau's Motion seeks reconsideration of the judge's June 17, 1993, ruling which continued the above-captioned proceeding until November 24, 1993.<sup>1/</sup> As the Bureau itself acknowledges in its Motion for Leave to File Petition for Reconsideration, Section 1.106(a)(1) of the Commission's rules does not contemplate reconsideration of interlocutory rulings. The Bureau, however, argues that the ruling in question was made "based

---

<sup>1/</sup> The judge's rulings at that prehearing conference were memorialized in an Order released June 21, 1993, FCC 93M-382.

on a misunderstanding of the Bureau's exact position thereon." In this regard, Bureau counsel, at the prehearing conference, indicated that the Bureau would not object to a continuance of three months. The Bureau now states that it "failed to sufficiently clarify" that the consent to the continuance was to three months from the date of the prehearing conference and not, as the judge explained in his ruling, three months from the original hearing date of August 24, 1993.

2. Devine has not yet received a transcript of the prehearing conference. However, undersigned counsel recollects that the Bureau did quite ably argue to the judge its position. The Judge considered the Bureau's arguments and made his ruling. The Bureau, however, disappointed that the Judge did not go along with its position, is seeking reconsideration. However, as the Bureau itself acknowledges, there is no basis under the Commission's rules for reconsideration of the Judge's ruling. Moreover, the Bureau does not cite a case in support of its argument that reconsideration is appropriate. Furthermore, the Bureau's stated basis for seeking reconsideration does not comport with the facts. In this regard, the Bureau articulated its position at the prehearing conference. The Bureau's position was quite clear to all parties present at the prehearing conference. The transcript of the proceeding will bear this out. The Bureau's reliance on Section 1.294(d) of the Commission's rules is perplexing. In this regard, that section deals with the submission of opposition and replies to interlocutory requests. Devine fails

to understand the applicability of this rule to the advancement of the Bureau's position.

Accordingly, it is submitted that the Judge's ruling as memorialized in the Judge's June 21, 1993, Order should stand.

Respectfully submitted,

C. DEVINE MEDIA, INC.

By:

*Aaron P. Shainis*

Aaron P. Shainis

By:

*Lee J. Peltzman* <sup>APS</sup>

Lee J. Peltzman

Its Attorneys

SHAINIS & PELTZMAN  
Suite 500  
1255 23rd Street, N. W.  
Washington, D. C. 20037  
202/857-2946

June 25, 1993

CERTIFICATE OF SERVICE

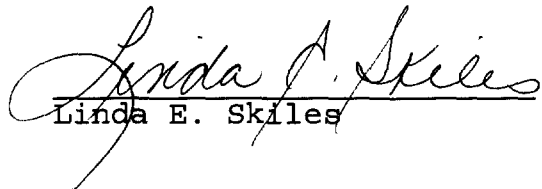
I, Linda E. Skiles, Office Administrator of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were mailed this 25th day of June, 1993, to the offices of the following:

Administrative Law  
Judge John M. Frysiak \*  
Federal Communications Commission  
Room 223  
2000 L Street, N. W.  
Washington, D. C. 20554

Y. Paulette Laden, Esq. \*  
Mass Media Bureau  
Federal Communications Commission  
Room 7212  
2025 M Street, N. W.  
Washington, D. C. 20554

Harry C. Martin, Esq.  
Suite 350  
1001 22nd Street, N. W.  
Washington, D. C. 20036

Mr. Street Stryder  
672 Hendy Creek Road  
Pine City, NY 14817

  
Linda E. Skiles

\* Via Hand Delivery